

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ELIZABETH BASHAM,

Plaintiff,

v.

**CITY OF NEW CASTLE,
PATRICK MCGUIRE and
ANTHONY CIOFFI,**

Defendants.

CIVIL ACTION NO. 20-4

JUDGE JOY FLOWERS CONTI

MEMORANDUM OPINION

Pending before the court in this property demolition case is a motion for summary judgment (ECF No. 35) filed by the City of New Castle (“City” or “New Castle”), Patrick McGuire (“McGuire”), the Code Enforcement Supervisor for the City, and Anthony Cioffi (“Cioffi”) who was, at the relevant time, the Code Enforcement Foreman for the City (collectively “defendants”). Plaintiff Elizabeth Basham (“Basham”) filed a response in opposition to the motion (ECF No. 37).

A motions hearing is currently scheduled for July 27, 2021. The hearing was originally set up to resolve defendants’ motion to dismiss count 3 of the amended complaint. The parties, however, reached a stipulation to dismiss that count and filed a joint motion to amend the case management order to set deadlines for summary judgment, which the court granted. The court’s standard summary judgment briefing order was never entered.

Defendants failed to comply with their duty to file a Concise Statement of Material Fact (“CSMF”) in support of their motion, as set forth in Local Rule 56. Basham did not file a responsive CSMF or a supplemental CSMF.

On June 30, 2021, the court issued a text order directing counsel to be prepared to address aspects of the “Takings Claim” that were not addressed in the parties’ briefs, specifically: (1)

whether the property was taken "for public use," *see In re 106 North Walnut, LLC*, 447 F. App'x 305 (3d Cir. 2011); and (2) whether the City is the appropriate defendant in a takings claim, *see Dewey v. City of Los Angeles*, 2019 WL 8112530 * 4 (C.D. Cal. 2019).

Local Rule 56(B) provides, in relevant part (emphasis added):

B. Motion Requirements. The motion for summary judgment must set forth succinctly, but without argument, the specific grounds upon which the judgment is sought and **must be accompanied** by the following:

1. A Concise Statement of Material Facts. A separately filed concise statement setting forth the facts essential for the Court to decide the motion for summary judgment, which the moving party contends are undisputed and material, including any facts which for purposes of the summary judgment motion only are assumed to be true. The facts set forth in any party's Concise Statement shall be stated in separately numbered paragraphs. A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or other part of the record supporting the party's statement, acceptance, or denial of the material fact

A summary judgment motion may be stricken due to a failure to comply with Local Rule 56 by neglecting to file a CSMF. *Slaughter v. Cty. of Allegheny*, No. 2:11-CV-880, 2013 WL 5491739, at *1 (W.D. Pa. Oct. 1, 2013).

This is a factually intensive case and the parties' briefs reflect numerous factual disputes. It will be difficult to resolve the pending motion without more precision from the parties about the facts that are actually in dispute. The pending summary judgment motion, therefore, will be stricken, albeit without prejudice.

Defendants will be permitted to file a renewed motion for summary judgment on or before August 3, 2021. Basham's response shall be due on or before August 31, 2021. The court will enter a standard summary judgment case management order.

The parties' filings must fully comply with Local Rule 56 and the court's order. In particular, the process of preparing, and responding to, CSMFs will likely aid the parties in analyzing and articulating their respective positions. The CSMFs will significantly aid the court

in resolving the summary judgment motion. The motions hearing on July 27, 2021 will be cancelled, and the court will reserve its decision to entertain oral argument until it reviews the parties' renewed filings.

Conclusion

For the reasons set forth above, defendants' motion for summary judgment (ECF No. 35) will be STRICKEN for failure to comply with Local Rule 56. Defendants will be permitted to file a renewed motion for summary judgment on or before August 3, 2021. Basham's response shall be due on or before August 31, 2021. The court will enter a standard summary judgment case management order. The parties shall fully comply with the court's order and Local Rule 56. The motions hearing on July 27, 2021 will be cancelled.

An appropriate order will be entered.

BY THE COURT,

Dated: July 7, 2021

/s/ Joy Flowers Conti
Joy Flowers Conti
Senior United States District Judge